

Appendix I

- **Claim**, either in the singular or plural, means:
 - (1) a written demand for monetary, non-monetary or injunctive relief;
 - (2) a civil, criminal, administrative or arbitration proceeding which is commenced by:
 - (a) service of a complaint or similar pleading;
 - (b) return of an indictment, information or similar document in the case of a criminal proceeding; or
 - (c) receipt or filing of a notice of charges;
 - (3) a civil, criminal, administrative or regulatory investigation:
 - (a) once an **Insured** is identified in writing by an investigating authority that a proceeding described in Section (2) above may be commenced; or
 - (b) in the case of an investigation by any state, federal or foreign governmental authority, after the service of a subpoena, target letter, Wells Notice or similar document; and
 - (4) a written notice of commencement of a fact-finding investigation by the U. S. Department of Labor or the U.S. Pension Benefit Guaranty Corporation;

for a **Wrongful Act**, including any appeal from the foregoing; provided, however, that a regulatory proceeding or investigation shall be a **Claim** only to the extent such regulatory proceeding or investigation: (I) relates to a **Sponsored Plan** or its beneficiaries; or (II) is on behalf of, for the benefit of, or at the behest of any **Customer** or potential **Customer** of the **Insured**.¹

- **Claims Expenses** means reasonable legal fees and expenses incurred in the defense or investigation of any **Claim**, including the premium for an appeal bond, attachment bond or similar bond (but not applying for or furnishing such bond). **Claims Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees or other benefits of its directors, officers or employees.²

¹ ECF No. 49-2 at 17.

² *Id.*

- **Damages** means a judgment, award, surcharge or settlement as a result of a Claim and any award of pre- and post-judgment interest, attorneys' fees and costs. Damages shall not include any:
 - (1) taxes, civil or criminal fines or penalties, other than (a) the 20% or less civil penalties imposed upon an **Insured** under Sections 502(i) and 502(l) of the Employee Retirement Income Security Act of 1974, as amended (hereinafter ERISA), or (b) penalties or fines imposed upon an **Insured** pursuant to Health Insurance Portability and Accountability Act of 1996, as amended;
 - (2) amounts for which the **Insured** is liable under the terms of a **Sponsored Plan** as remuneration, overhead or benefits paid or payable pursuant to the terms of such **Sponsored Plan**, other than a monetary award in, or fund for settling, a **Claim** against an **Insured** to the extent such **Claim** alleges loss to a **Sponsored Plan** by reason of a change in the value of investments held by such **Sponsored Plan** or loss to the actual account(s) of one or more of participants in a **Sponsored Plan** by reason of a change in the value of investments held by such **Sponsored Plan** (including but not limited to securities issued by a **Company**), whether or not the amounts sought in such **Claim** have been characterized by plaintiffs or held by a court to be "benefits;"
 - (3) amount for which no **Insured** is financially liable or for which there is no legal recourse against any **Insured**;
 - (4) salaries or commissions of any **Insured**;
 - (5) fees, commissions or charges for **Professional Services** paid or payable to an **Insured**;
 - (6) principal, interest or other monies either paid, accrued or due an **Insured** as a result of any loan, lease or extension of credit;
 - (7) direct investment of the **Insured** in any debt or equity security underwritten by the **Insured**; or
 - (8) loss of the actual money, securities, property, **Documents** or other items of value in the custody or control of the **Insureds**, or its agents, or in transit.

Damages will include punitive, exemplary or the multiplied portion of any multiplied damages award. The insurability of punitive, exemplary or multiplied damages shall be governed by the law of any applicable jurisdiction which most favors coverage for such punitive, exemplary or multiplied damages.³

³ ECF No. 49-2 at 19.

- **Loss** means **Claims Expenses** and **Damages**.⁴
- **Professional Services** means:
 - (1) services performed by the **Insured** (or by any other person or entity for whose acts, errors or omissions the Insured is or is alleged to be legally responsible) for, for the benefit of, or on behalf of a **Customer** or potential **Customer** of the Insured for a fee, commission or other consideration (or where a fee, commission or other consideration would normally be received by the **Insured**); and
 - (2) **Sponsored Plan Services**.⁵
- **Wrongful Act** means any:
 - (1) actual or alleged act, error or omission committed by any **Insured** in the rendering of or failure to render **Professional Services**;
 - (2) any matter claimed against a natural person **Insured** due solely to such natural person **Insured's** service as a fiduciary of any **Sponsored Plan**; and
 - (3) any breach of the responsibilities, obligations or duties imposed upon the fiduciaries of the **Company**.⁶

⁴ ECF No. 49-2 at 20.

⁵ *Id.*

⁶ ECF No. 49-2 at 21-22.